

DATE: April 9, 1998

SUBJECT: PETITIONS FOR PANEL REHEARING

1. Distribution of petition.

(a) Unless a petition expressly asks for en banc action, it will be deemed to request only rehearing by the panel. Petitions for rehearing en banc and combined petitions for panel rehearing and for rehearing en banc are first processed as petitions under this IOP and may thereafter be processed under IOP # 14.

(b) Promptly on receipt, the clerk will distribute the petition to the merits panel members with a petition for panel rehearing vote sheet. The voting deadline will be seven working days following distribution of the petition.

2. Voting.

(a) Panel members who desire no action on a petition need do nothing.

(b) If the clerk does not receive a form from a panel member by the day following the deadline, that panel member will be deemed to have voted to deny the petition.

(c) A panel member desiring action on the petition will so indicate on the petition for panel rehearing vote sheet and send it to the clerk. Copies of the marked form will be sent to the other panel members, with an attached memorandum of reasons if desired.

3. Orders.

(a) On the day following the deadline, if the vote of the panel is to deny the petition, the clerk will forthwith prepare and issue an order if en banc action is not required, but if en banc action is required, the panel order denying the petition will be withheld and entered in a consolidated order disposing of the petition for rehearing in banc.

(b) In preparing an order granting the petition, the clerk will include the action specified by the panel (oral argument; additional briefing; modification of opinion; etc.). If oral argument is ordered, the clerk will notify the chief judge. If modification of the opinion is desired, the author of the original opinion will supply the clerk with an appropriate order.

4. Responses.

(a) When a panel may wish to grant a petition (other than to make mere language changes without change in result) the clerk will invite a response from the non-petitioning parties and will not issue the order granting the petition until seven working days following distribution of a response. The response will be distributed with a new petition for panel rehearing vote sheet, with a voting deadline of seven working days following distribution of the response. During the seven-day period following distribution of a response, a judge may change his or her earlier vote to grant by distributing a memo to the other panel members and the clerk. Judges who have not voted, and who continue after receipt of a response to favor denial, need do nothing. If the invitation to respond is declined, the clerk will issue the order granting the petition.

(b) A judge may, before the original voting deadline, direct the clerk to request a response, notifying the other panel members by a copy of his or her petition for panel rehearing vote sheet. The original voting deadline is stayed pending receipt of the response. A new voting deadline, seven working days after the clerk distributes the response, will appear on the new petition for panel rehearing vote sheet accompanying the response. If the party declines to file a response, the new date shall be seven working days after the clerk distributes a routing slip indicating no response will be filed.

5. In general.

(a) When a judge votes to grant a petition “only to make language changes attached”, the clerk will withhold issuance of an order for seven additional working days, to enable other merits panel members to review those changes. Absent contrary notice on a petition for panel rehearing vote sheet, the clerk will issue the order making the changes attached.

(b) When a panel’s action on a petition is limited to changes in the language of an original precedential opinion (without change in the result) and the panel deems the changes material, the petition for panel rehearing vote sheet and the order reflecting the changes will be circulated to the court.

(c) When a senior judge of this court or a visiting judge served on the panel, that judge will participate in consideration and disposition of a petition. The clerk will send two copies of the petition for panel rehearing vote sheet to a visiting judge who authored the panel’s original opinion.

(d) If the panel's action on the petition involves substitution of a precedential for an original nonprecedential opinion, the substituted opinion will be circulated to the court.